Supreme Court, U. S.
FILED
FEB 28 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976.

No. 76-1196

CONFEDERATION OF POLICE, A NOT FOR PROFIT CORPORATION, AND THE CLASS OF MEMBERS OF THE CONFEDERATION OF POLICE BY JAMES M. JOHNSON,

and

ALFRED H. MARSHALL, ELLA SAUNDERS, ELEANOR PROTAS, ODESSA J. GATES, AND LILLIAN HARRIS, AS INDIVIDUALS AND ON BEHALF OF THE CLASS OF MEMBERS OF LOCAL 505, COUNCIL 19, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO,

Petitioners,

vs.

THE CITY OF CHICAGO, A MUNICIPAL CORPORATION, AND RICHARD J. DALEY, AS MAYOR OF THE CITY OF CHICAGO,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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Respondents.

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Petitioners, Confederation of Police, a not for profit corporation, and Local 505, Council 19, American Federation of State County and Municipal Employees AFL-CIO as individual members of the civil service of the City of Chicago, on behalf of

themselves and as representatives of a class, hereby respectfully pray that writs of certiorari issue to review decisions of the United States Court of Appeals for the Seventh Circuit entered June 9, 1976. The subject Petition seeks review of two independent decisions of the Court of Appeals embodied in its order of June 9, 1976 (rehearing denied November 29, 1976). Both holdings of the Court of Appeals present important questions of federal law decided adversely to the Petitioners.

The order and decisions of the Court of Appeals affirmed the holding of the United States District Court for the Northern District of Illinois, while reversing the District Court on points of law. The District Court entered summary judgment in favor of the Respondents on June 15, 1973.

OPINION BELOW.

The opinion of the United States Court of Appeals for the Seventh Circuit is unpublished pursuant to Circuit Rule 28.

JURISDICTION.

Jurisdiction of the Supreme Court is invoked under Title 28 United States Code Section 1254.

QUESTIONS PRESENTED.

Although this Petition is based upon a single order of the Court of Appeals, two distinct and separate holdings are the subject of this Petition seeking review by the Supreme Court are presented.

The First Question: Did a public employer violate the Economic Stabilization Act, as amended in 1971, Title 12 United States Code Section 1904, *et seq.* and/or the Constitution of the United States of America by failing to fully restore the salary schedules for civil service employees of a city, effective January 1, 1972. Specifically, the following distinct issues are raised:

(a) Does Section 203(c)(3) of the Economic Stabilization Act, as amended in 1971, require the restoration of wages withheld from civil service employees by a public employer from August 15, 1971 through December 31, 1971;

(b) Does a public employer violate the prohibition against impairment of contracts set forth in Article I, Section 10, Clause 1 of the Constitution of the United States and the due process guarantees of the Fourteenth Amendment by failing to retroactively restore the base salaries of its civil service employees effective December 31, 1971, pursuant to the city's 1971 appropriation ordinance, following the passage and presidential implementation of Section 203(c)(3) of the Economic Stabilization Act, as amended in 1971;

(c) Does a public employer violate the guarantees of equal protection embodied in the Fourteenth Amendment to the Constitution of the United States by maintaining disparate base wage rates since January 1, 1972 and thereafter for incumbents in identical job titles within its civil service system, based solely on the presidential wage freeze from August 15, 1971 through December 31, 1971.

The Second Question: Does a public employer violate the Constitution of the United States by eliminating earned seniority and longevity increases for its civil service employees. Specifically, the following distinct issues are raised:

(a) Does a public employer violate the prohibition against impairment of contracts set forth in Article I, Section 10, Clause 1 and the due process guarantees of the Fourteenth Amendment of the Constitution of the United States by failing to honor earned seniority credits towards automatic wage progression of members of its civil service by unilaterally eliminating all such credits;

(b) Does a public employer violate the equal protection guarantees of the Fourteenth Amendment to the Constitu-

tion of the United States by unilaterally eliminating and refusing to honor all earned seniority credits of members of its civil service and, thereby, placing them in the exact position as newly hired employees in the identical civil service titles.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED.

The constitutional and statutory provisions applicable to both questions presented in this Petition are set forth as follows:

The United States Constitution, Article I, Section 10, Clause 1, provides, in pertinent part:

> "No State shall . . . pass any . . . ex post facto Law, or Law impairing the Obligation of Contracts. . . ."

The United States Constitution, Amendment XIV, provides, in pertinent part:

> "Section 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Section 203(c)(3) of the 1971 amendments to the Economic Stabilization Act provides, in pertinent part:

> "(3) In addition to the payment of wage and salary increases provided for under paragraphs (1) and (2), beginning on the date on which this subsection takes effect, the President shall promptly take such action as may be necessary to require the payment of any wage or salary increases (including any insurance or other fringe benefits offered in connection with employment) which have been, or in the absence of this subsection would be, withheld under the authority of this title, if the President determines that . . .
>
> (A) Such increases were provided for by law or contract prior to August 15, 1971. . . ."

STATEMENT OF THE CASE.

Suit was commenced in the United States District Court by the officers and members of organizations among the civil service employees of the City of Chicago. The defendants were the City of Chicago, a municipal corporation, the employer of the individual plaintiffs and the class they represent, and the Mayor, as the chief executive officer, implementing the City's employment policies.

Jurisdiction of the district court was founded under general federal question authority, Title 29 United States Code Section 1351 and Article I, Section 10, Clause 1 and the Fourteenth Amendment to the Constitution of the United States. Jurisdiction also was asserted under Section 210(a) of the Economic Stabilization Act, as amended in 1971, providing for direct jurisdiction of the district courts of the United States, without regard to the amount in controversy, for "[a]ny person suffering legal wrong because of any act or practice arising out of this title. . . ."

Complaint was filed on November 10, 1972. The nature of the complaint can best be set forth by briefly describing, in outline fashion, the sequence of undisputed events which led up to the suit:

1) Effective January 1, 1971 the City of Chicago's appropriation ordinance provided for specific, automatic wage increases for years of service within the City's civil service system ("longevity increases"), as well as length of service within a particular job title established for the service ("step increases"). The action of the City Council in appropriating for the 1971 seniority or longevity wage increases was a carryover of continuing city policy for the previous years since the City maintained a civil service system.

2) Effective August 15, 1971 the President instituted a national "wage freeze", affecting the civil service em-

ployees of the City of Chicago who were scheduled to receive increases in their base salary rates by virtue of either their years of service within the City's civil service system or the "time" in their job titles. Thus, the City held up the base salary increases falling due on and after August 15, 1971.

3) In December, 1971 the Congress of the United States amended the Economic Stabilization Act authorizing the retroactive restoration of salary increases falling due on and after August 15, 1971 where "[s]uch increases were provided for by law or contract prior to August 15, 1971. . . ." Economic Stabilization Act, as amended, Section 203(c)(3)(A).

4) Effective January 1, 1972 the City of Chicago adopted its appropriation ordinance for calendar year 1972. The ordinance contained two separate directions for the salaries of civil service employees which have direct bearing upon this litigation and the separate questions posed in the subject Petition. First, the City Council granted an "across-the-board" wage increase based upon a percentage of a civil service employee's salary level as of December 31, 1971. Secondly, and independent of the first action, the City eliminated all provisions for future salary increases based upon years of service. Although not specifically provided for in the appropriation ordinance, there is no dispute that the action of the City Council was designed to eliminate all past credit earned by civil service employees toward their seniority or longevity increase.

5) On January 26, 1972 the President, through the "Pay Board" issued regulations implementing the December, 1971 amendments to the Economic Stabilization Act for retroactive restoration of scheduled salary increases. Following the Pay Board's action, the City of Chicago passed a supplemental appropriation ordinance to pay, in a lump sum, the difference of salary earned and salary

levels for those employees who were scheduled for a step or longevity increase from August 15, 1971 through December 31, 1971. However, the supplemental appropriation ordinance did *not* provide that the employees affected by the "freeze" would have their actual salaries retroactively adjusted. Thus, these employees were still maintained, effective December 31, 1971, at their base salaries existing prior to August 15, 1971, upon which their 1972 percentage wage increase was based. The City's action was also adversely to affect the "frozen" employees for their remaining years of service with the City.

The complaint, therefore, made the following basic allegations:

a) The failure of the City to actually restore the scheduled salaries, effective December 31, 1971, violated not only the requirements of the amendments to the Economic Stabilization Act but was an impairment of a contractual obligation by a subdivision of a state and a deprivation of property without due process and a denial of equal protection by government.

b) As a separate and distinct cause of action, the complaint also alleged that the complete elimination of step and longevity increases which would have fallen due after December 31, 1971 and the total failure to recognize step and longevity credit earned in years prior to January 1, 1972 unlawfully impaired contractual obligations of the City, as well as deprived all the affected civil service employees of due process and denied them equal protection.

The District Court's Decision.

The District Court concluded there was no dispute of material facts. The Court issued summary judgment for the defendants with these findings of law:

1) The amendments to the Economic Stabilization Act did not *require* the restoration of scheduled salary increases;

2) The City's civil service employees did not have any contractual or other legally enforceable right to the frozen salary increases;

3) The failure of the City to actually restore the base salaries of the affected employees as of December 31, 1971, as well as the complete elimination of earned step and longevity increases, was "reasonable" by the City, as a matter of law, and, therefore, was neither a deprivation of due process nor denial of equal protection.

4) Each member of the plaintiff class could not reasonably be said to have been damaged by at least ten thousand dollars ($10,000) to sustain general federal jurisdiction.

The Court of Appeals' Decision.

The Court of Appeals affirmed the order of the District Court, while disagreeing with some of its holdings. The Court of Appeals found:

1) Whether the Economic Stabilization Act or any other principle of law *required* the restoration of frozen salary schedules is not decisive, in that the payment by the City in a lump sum of the withheld increases from August 15, 1971 through December 31, 1971 is in sufficient compliance with the amendments to the Act and law.

2) General federal jurisdiction was maintainable in that the defendants' actions could reasonably be held to damage each member of the affected class by at least ten thousand dollars ($10,000) because of the continuing and compounded effect upon each employee in the ensuing years of employment in the City's cvil service. Furthermore, the Court of Appeals referred to the fact that there was nothing in the record by which the District Court could determine that each member of the class would be reasonably deprived of ten thousand dollars ($10,000) by virtue of the City's action.

3) However, the Court of Appeals found, as a matter of law, that the failure of the City to restore the salary schedules frozen in 1971 did not create an unreasonable classification of employees within the City's civil service. Although the Court of Appeals recognized that by virtue of the defendants' actions, employees in the same job titles would be on different salary schedules and bases for years to come, in "economic matters", a political subdivision may afford different treatment to the same group of employees "if any set of facts reasonably may be conceived to justify it" (citing *Dandridge* v. *Williams*, 393 U. S. 471 (1970)).

4) The Court of Appeals reached the same conclusion, in relation to the complete elimination of step and longevity credits, holding that the employees had no contractual rights to the credits and, therefore, could not be deprived of due process and, it also being a matter of economic concern, any disparate treatment of the affected employees could not be subject to equal protection considerations.

HOW FEDERAL QUESTION WAS PRESENTED.

The complaint specifically alleged violations of the Economic Stabilization Act and the Constitution of the United States.

The Court of Appeals found that federal question jurisdiction was properly brought in the District Court, but held against the plaintiffs on matters of interpretation and application of federal statutory and constitutional law.

REASONS FOR GRANTING THE WRIT.

The First Question.

There is, in actuality, a single reason for the Court of Appeals' affirmation of the District Court's holding covering the restoration of the salary schedules "frozen" from August

through December, 1971. That reason raises a very significant question of constitutional law. The Court of Appeals held, as a matter of law, that a political subdivision may create unequal economic classes among its civil service employees without raising any question of due process or equal protection. More precisely, the Court of Appeals' decision would hold, as a matter of law, that among a common group of civil service employees individuals may suffer significant disparate treatment without consideration of relative merit, value or any other standard; i.e., the disparity may be for completely arbitrary, irrational or wholly unfair reasons.

We must bear in mind that there was *no* record before either the District Court or the Court of Appeals as to *why* the City did not restore the frozen salary schedules. Rather, the assumption must be made that the only reason, in the record, for continuing to deprive the employees caught in the "freeze" of the restored base salaries was simply the happenstance of history that because of national economic policy their salary schedules provided for by municipal ordinance were *temporarily* frozen then *restored* by action of Congress and the President. No other explanation was either offered by the City or could be implied in the record.

In fact, the only logical meaning of the Court of Appeals' decision is that even if the frozen salary schedules were actually restored effective to and including December 31, 1971, the City could then have arbitrarily reduced employees back to their pre-August 15, 1971 base salaries in determining their salary schedules effective January 1, 1972 and thereafter into the indefinite future.

We suggest that the Court of Appeals' decision necessarily implies that as a matter of law, whatever may be constitutional restraints upon classification of civil servants by government, based upon a "rule of reason", no such rule is applicable when one considers classifications which operate in the area of economic deprivation. We submit that this issue merits serious consideration by the Supreme Court.

We wish to underscore for the Court that the decision of the Supreme Court of the State of Illinois in *Chicago Patrolmen's Association, et al* v. *The City of Chicago,* 56 Ill. 2d 503 (1974), did not touch the question of the frozen and unrestored 1971 salary schedules. Furthermore, the decision of the Court of Appeals runs contrary to the basic principle of constitutional law that there is a presumption that government must apply equal standards to like public employees in connection with their terms and conditions of employment. *Wasson* v. *Trowbridge,* 382 F. 2d 807 (C. A. 2, 1967); *Sphritzer* v. *Lang,* 234 N. Y. S. 2d 285 (1962); *Parolisi* v. *Board of Examiners,* 285 N. Y. S. 2d 936 (1967); *Shapiro* v. *Thompson,* 394 U. S. 618 (1968). The presumption must be even stronger where the government's employees serve pursuant to a statutory civil service scheme designed to classify them into common job titles. The recent decision of the Supreme Court of the United States in *Kelly* v. *Johnson,* ..... U. S. ....., 47 L. Ed. 2d 708 (1976), underscored the requirement that the public body *demonstrate* the rational basis for maintaining disparate treatment of its employees.

The Second Question.

While the subject suit was pending in the federal courts, a different employee organization sought relief in the state court on the limited question of the City's elimination of all earned step and longevity increases, effective January 1, 1972. In 1974, the Supreme Court of the State of Illinois in *Chicago Patrolmen's Association* v. *The City of Chicago, supra,* decided the issue adversely to the plaintiffs. In so holding, the State Supreme Court held, as a matter of Illinois law, the City's civil service employees had no contractual right to their earned step and longevity increases. The Court of Appeals cited and relied upon the decision of the State Supreme Court in finding, therefore, there could not be a deprivation of contractual obligations and due process in violation of the United States Con-

stitution. The Court of Appeals then dispensed with the constitutional question of equal protection in the identical manner in which it rejected consideration of the failure to restore the frozen salary schedules. The Court of Appeals, in effect, concluded, as matter of law, that members of the civil service could be treated in an identical manner as those newly hired into the same job titles, disregarding the senior employees' earned years of service credits, pursuant to repeated and continuous actions of succeeding appropriation ordinances.

It must be borne in mind that the Supreme Court of the State of Illinois did *not* hold that the City of Chicago was prevented from honoring or maintaining earned step and longevity credits under state law, nor did the State Court consider the constitutional question of legal protection. The Court of Appeals only concluded, as a matter of law, that such disparate treatment could be maintained without any record of justification of the City's action in the case.

Respectfully submitted,

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APPENDIX.

UNITED STATES COURT OF APPEALS.
For the Seventh Circuit,
Chicago, Illinois 60604.

Argued May 30, 1974.

June 9, 1976.

Before

HON. TOM C. CLARK, *Associate Justice**
HON. LUTHER M. SWYGERT, *Circuit Judge*
HON. WILLIAM J. CAMPBELL, *Senior District Judge***

CONFEDERATION OF POLICE, ET AL.,
Plaintiffs-Appellants,

No. 73-1771 *vs.*

THE CITY OF CHICAGO, ET AL.,
Defendants-Appellees,

and

ALFRED H. MARSHALL, ET AL.,
Plaintiffs-Appellants,

vs.

THE CITY OF CHICAGO, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Nos. 72-C-2844
72-C-2896

Honorable
Thomas R. McMillen,
Judge.

ORDER

This is an appeal from an order of the district court granting defendants' motion for summary judgment in two consolidated

* The Honorable Tom C. Clark, Associate Justice of the Supreme Court of the United States (Retired), is sitting by designation.

** The Honorable William J. Campbell, Senior District Judge, Northern District of Illinois, is sitting by designation.

cases. Plaintiffs are two labor organizations and certain of their members employed by the City of Chicago in various "white collar" positions and the Chicago Police Department, suing individually and on behalf of municipal employees similarly situated. The facts are not disputed.

Chicago's Civil Service personnel are paid in accordance with provisions of annual appropriations ordinances. For a number of years prior to and including 1971, these ordinances not only specified the base salary for each position or job classification, but also provided for "step" increases based upon months of service within each job classification and "longevity" increases based upon the number of years of service. Until August 14, 1971, the salary levels of those employees who qualified for step and/or longevity increases under the terms of the applicable appropriations ordinance were adjusted accordingly.

On August 15, 1971, pursuant to the Economic Stabilization Act of 1970 (P. L. 91-379; 84 Stat. 799), 12 U. S. C. § 1904 (Note), the President issued Executive Order No. 11615 freezing prices, rents, wages and salaries for a period of ninety days (Phase I). One of the effects of this Executive Order was to prevent the payment of step or longevity increases to employees who, on or after August 15, 1971, would have become eligible for such increases under the 1971 appropriations ordinance.

On October 15, 1971, the Cost of Living Council was established and guidelines were thereafter promulgated limiting wage and salary increases to 5.5%. On December 10, 1971, the Chicago City Council passed the 1972 appropriations ordinance, increasing the salaries of Civil Service employees by approximately 5%, based upon salaries actually received in 1971. Thus, the salary for an employee who had received a step or longevity increase prior to August 15, 1971, was raised in 1972 to a level approximately 5% higher than his 1971 salary level, as adjusted by the step and longevity increases actually paid. The salary for employees who had not received a step or longevity increase due to the wage-price freeze, however, increased in 1972 by about

5%, on the basis of the salary level which prevailed at the time the freeze took effect—*i.e.*, the 1971 salary level, unadjusted by the step or longevity increases which otherwise would have become effective during the last quarter of 1971. Unlike previous years, the 1972 ordinance did not provide for step or longevity increases.

On January 26, 1972, the Pay Board issued a regulation (6 C. F. R. § 201.31) which provided, in substance, that employees who had been scheduled to receive a pay increase during Phase I pursuant to a pay practice established prior to August 15, 1971 could be paid such increase retroactively. In February, 1972, the City of Chicago paid in a lump sum all step and longevity increases which, but for the August 15, 1971 Executive Order, would have been paid under the 1971 appropriations ordinance. No adjustment was made in the salary levels established under the 1972 ordinance. Accordingly, the lump sum payment did not alter the fact that, while the 1972 salary levels of employees who received step or longevity increases in 1971 prior to August 15 of that year reflected said increases, the 1972 salary levels of those who received lump sum payments were determined on the basis of the salary which prevailed immediately prior to Phase I.

Arguing that the 1971 amendments to the Economic Stabilization Act require full restoration of step and longevity increases withheld during Phase I, plaintiffs contend that the salary levels established for 1972 and subsequent years must be determined so as to include the step and longevity increases that were scheduled to be paid under the 1971 appropriations ordinance.[1]

1. In this regard, plaintiffs cite Section 203(c)(3) of the Economic Stabilization Act, which provides in part that:

> [B]eginning on the date on which this subsection takes effect, the President shall promptly take such action as may be necessary to require the payment of any wage or salary increases . . . which have been . . . withheld under the authority of this title, if the President determines that—
>
> (A) such increases were provided for by law or contract prior to August 15, 1971; and
>
> (B) . . . appropriations have been made . . . in order to cover such increases."

(Continued on next page)

They further contend that the failure to include these increases in establishing their salaries for 1972 and subsequent years violates the prohibition against impairment of contracts embodied in Article I, Section 10, Clause 1 of the Constitution of the United States, and constitutes the taking of property without due process of law in violation of the Fourteenth Amendment's Due Process Clause.

Appellants recognize that these constitutional claims, as well as the claim premised on the Economic Stabilization Act, hinge on the existence of some form of contractual relationship between the City and the plaintiffs under which the latter are entitled to be paid step and longevity increases regardless of whether the appropriations ordinance then in force so provides.[2] In the absence of such a contractual relationship, the prohibition against the impairment of contracts is obviously inapposite, as

(Continued from preceding page)

Whether the back-payment of such increases for the year 1971 was mandatory or, as the district court held, discretionary, is immaterial since the step and longevity increases for that year were eventually paid. As for subsequent years, we need not consider whether or not the statute, *where applicable,* is mandatory, since the statute is operative only if the claimed increase had been "provided for by law or contract prior to August 15, 1971 . . .". Clearly, step and longevity increases for years subsequent to 1971 were not provided for by law prior to August 15, 1971, and for reasons more fully discussed herein, we hold that the City was not contractually bound to pay such increases in subsequent years. Moreover, the second statutory condition remains unsatisfied with respect to 1972 and later years: i.e., unlike 1971, appropriations had not been made to "cover such increases".

2. Thus, appellants state in their brief that
"We therefore do not distinguish requirements of the Economic Stabilization Act from the prohibition directed against local public bodies found in the Constitution of the United States. The foundation of the Appellants' legal position is therefore founded on the principle that local governmental bodies cannot impair their contractual obligations to their employees. . . .

The prohibition against impairment of contractual obligations is often intermeshed with concepts of due process and equal protection . . . as well as related common law principles of equitable or promissorial estoppel." (Appellants' brief, p. 15).

are the requirements of the Due Process Clause, since the "property" thereby protected is the claimed contractual right to step and longevity increases. As has previously been discussed,[3] any entitlement under the Economic Stabilization Act requires a showing that the increases were provided for by a contract in existence prior to August 15, 1971.

In essence, appellants argue that an implied contractual relationship was created by their performance of duties in past years in anticipation that the City would adjust their salary levels in subsequent years to reflect the step and longevity increases specified in the annual appropriations ordinances in effect prior to 1972. From this premise, they maintain that the City was contractually bound to adjust salary levels in 1972 and subsequent years to reflect the 1971 step and longevity increases which were to have taken effect during the final quarter of 1971. It is further argued that those who would have received step and/or longevity increases in 1972 or in subsequent years pursuant to the provisions of the pre-1972 appropriations ordinances, substantially performed their contractual duties by the end of 1971, and are entitled to be compensated for such partial service under principles of *quantum meruit.*

In addition to these contentions, which depend upon the existence of a contractual relationship, appellants argue that they are receiving different and lower rates of pay for the same services rendered by other City employees solely because they were scheduled to receive their step and/or longevity increases during Phase I, and that they thereby have been deprived of equal protection of the law.

The district court held that the regulations issued under the Economic Stabilization Act did not require the payment of pay withheld during Phase I and that plaintiffs possessed neither expressed nor implied contractual rights to step or longevity increases. Accordingly, the court held that neither the prohibition of Article 1 against impairment of contractual obligations,

3. See Footnote 1, *supra.*

nor the Fourteenth Amendment's prohibition against the taking of property without due process of law, had been abridged.

In answer to plaintiffs' equal protection claim, the district court held that the "classification" created, in terms of 1972 salary levels, by adjusting salaries on the basis of wages actually received in 1971, was not unreasonable and therefore "does not raise a constitutional issue". The court further held that plaintiffs' claims had not satisfied the requirements of 28 U S C § 1331 as to jurisdictional amount.

We turn first to the jurisdictional question. In their complaints, appellants asserted, as bases for jurisdiction, (1) general federal question jurisdiction (28 U S C § 1331), (2) Section 210 of the Economic Stabilization Act, 12 U S C § 1904 (Note), and (3) the Declaratory Judgment Act, 28 U S C § 2201.

The Declaratory Judgment Act created a remedy; it does not confer jurisdiction beyond that which otherwise is provided by statute. *Skelly Oil Co.* v. *Phillips Co.*, 339 U. S. 667, 671 (1950). And Section 210 of the Economic Stabilization Act, which vests the district court with jurisdiction over claims based upon allegedly wrongful acts or practices "arising out of this title", irrespective of the amount in controversy, would appear to grant jurisdiction only with respect to Count I of the Complaint (alleging a violation of the Act). But, contrary to the district court's determination in this respect, we consider the amount in controversy required under 28 U S C § 1331 to have been satisfied. The Complaints in these consolidated cases seek more than the payment, for the year 1972, of step and longevity increases which would have become effective after August 14, 1971. Implicit in plaintiff's claim is the assertion that once an employee's base pay has been adjusted in accordance with the step and longevity provisions of a given appropriations ordinance, future salary levels for such employees cannot be reduced below this adjusted amount, and future percentage increases in pay must be determined on the basis of such adjusted salary levels. Thus, it is contended that each plaintiff will suffer a

re-occurring loss in each year of service after 1971 equal to the difference between (1) his or her salary level on August 14, 1971 and (2) the salary level which would have become effective prior to the end of the 1971 calendar year (but for Phase I), compounded by future percentage increases in salary. In this regard, plaintiffs' Complaints allege that defendants' actions:

> "Will continue to seriously deprive each and every of the individual Plaintiffs of substantial sums of money for the year 1972 and for an indefinite time thereafter so long as they remain [so employed]. . . . Future pay increases . . . will . . . be based upon a base salary rate minus the aforesaid seniority and/or longevity increases that they were scheduled to receive during the period of August 14, 1971 through December 31, 1971."

Since we cannot say from the face of the complaint that the claim of any plaintiff would be less than $10,000.00, given the allegations of re-occurring and compounded loss, we hold that the amount in controversy required by 28 U S C § 1331 has been met.

We agree with the district court, however, that plaintiffs possessed no contractual right to the payment of step and longevity increases in years subsequent to 1971, and therefore that plaintiffs claim under the Economic Stabilization Act, as well as those based upon the prohibition against impairment of contractual obligations and the denial of due process must be rejected. In determining whether a contractual relationship existed, we must look to Illinois law.

Section 8-1-7 of the Illinois Municipal Code (Ill. Rev. Stat. Ch. 24, par. 8-1-7) provides that:

> "No contract shall be made by the corporate authorities, or by any committee or member thereof, and no expense shall be incurred . . . unless an appropriation has been previously made concerning the contract or expense. Any contract made . . . in violation of the provisions of this section shall be null and void as to the municipality, and no money belonging thereto shall be paid on account thereof.

Under Illinois law, the City thus was without power to undertake a contractual commitment to pay step and longevity increases in future years, in the absence of an appropriation covering such expenses. Any contractual obligation that might arguably have been undertaken by the defendants in this regard would be null and void.

Moreover, it has long been the law in Illinois that "a public employee does not have a property interest in the continuance of any specific rate or method of compensation. *Gutherman* v. *City of Chicago* (1914), 263 Ill. 292". *Chicago Patrolmen's Association, et al.* v. *The City of Chicago,* 56 Ill. 2d 497 (1974). As the *Gutherman* Court stated:

> "It is a general rule, when not qualified or restricted by positive law, that the power that created any office may abolish it in its discretion, and this rule applies to municipal officers. The salaries of such officers may be reduced or otherwise regulated as the municipality may decide." 263 Ill. at 296.

The cases cited by plaintiffs do not hold to the contrary. They merely establish that a contract for the payment of services arises from the performance of those services under a law, resolution or ordinance which authorizes their performance and establishes a rate of compensation therefor. In the instant case, no ordinance existed in 1971 or in prior years which authorized the payment of step and longevity increases in future years. Under Illinois law, no contract existed for the payment of such increases, nor could such a contractual obligation legally have been undertaken. Neither can it be said that plaintiffs possessed any equitable right to such payments, since their reliance upon the continued appropriation for and payment of step and longevity increases was not justified. *Chicago Patrolmen's Association, et al.* v. *The City of Chicago,* 56 Ill. 2d 503, 508 (1974).

The district court also correctly rejected plaintiffs' claim of a denial of equal protection of the law. In economic matters, neither a State nor a political subdivision thereof violates the

Equal Protection Clause by creating a classification which results in affording different treatment to the group so classified, "if any set of facts reasonably may be conceived to justify it." *Dandridge* v. *Williams,* 393 U S 471 (1970). The wide leeway afforded the City in this respect to pass an ordinance which affects differently otherwise similarly situated people was delineated by the Supreme Court in *McDonald* v. *Board of Election Commissioners of Chicago,* 394 U S 802 (1969), wherein the Court noted that a presumption of statutory validity adheres to such laws. All that is required is that the statutory scheme bears some:

> "rational relationship to the legitimate state end and will be set aside as violative of the Equal Protection Clause only if based on reasons totally unrelated to the pursuit of that goal." 394 U S 808-809.

In this case, the 1972 appropriations ordinance was passed on December 10, 1971, at a time when federal guidelines called for wage increases during Phase II not in excess of 5.5%. By increasing salary levels to this extent based upon salary actually received in 1971, the City insured that all 1972 salaries would be within federal guidelines. Several months later, when permission was given to pay salary increases which would have become effective but for the prohibitions imposed during Phase I, said increases were paid in a lump sum to the extent that appropriations had been made therefor, i.e., in the amount that would have been paid during the last quarter of 1971 pursuant to the 1971 appropriations ordinance.

Under the facts of this case, we find that defendants did not act unreasonably, and that the distinction created between plaintiffs and the municipal employees who received step and longevity increases prior to August 15, 1971 bears a rational relationship to a legitimate goal. Accordingly, we find that the district court properly rejected plaintiffs' equal protection claims.

For the foregoing reasons, the judgment of the district court is affirmed.

AFFIRMED.

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FILED
OCT 10 1977

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1196

CONFEDERATION OF POLICE, a not for profit corporation, and the class of members of the Confederation of Police by James M. Johnson, Alfred H. Marshall, Ella Saunders, Eleanor Protas, Odessa J. Gates, and Tillian Harris, as individuals and on behalf of the class of members of Local 505, Council 19, American Federation of State, County and Municipal Employees, AFL-CIO,

Petitioners,

VS.

THE CITY OF CHICAGO, a municipal corporation, and RICHARD J. DALEY, as Mayor of the City of Chicago,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF RESPONDENTS IN OPPOSITION

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BRIEF OF RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court and the opinion of the United States Court of Appeals for the Seventh Circuit (Appendix to Petition) have not been reported.

JURISDICTION

The opinion of the United States Court of Appeals for the Seventh Circuit was filed on June 9, 1976. A timely petition for rehearing was denied on November 29, 1976. A petition for Writ of Certiorari was filed on February 28, 1977.

Jurisdiction is invoked pursuant to Title 28, United States Code, Section 1254.

QUESTIONS PRESENTED

Whether petitioners are entitled to salary increases under the Due Process and Equal Protection Clauses of the Fourteenth Amendment over and above those provided by a city appropriation ordinance.

Whether respondents' refusal to provide for salary increases over and above those provided by appropriation ordinance creates an unlawful classification in violation of the Equal Protection Clause of the Fourteenth Amendment.

REASONS FOR DENYING THE WRIT

This petition presents no issue of importance for this Court to decide because the rights of petitioners to salary increases were correctly decided according to long-standing state law that limits municipal employees' salaries only to those amounts actually appropriated.

I.

PETITIONERS HAVE NO RIGHTS UNDER STATE LAW TO SALARIES OVER AND ABOVE THOSE PROVIDED FOR IN THE 1972 APPROPRIATION ORDINANCE

Petitioners ask this Court to review a decision of the United States Court of Appeals for the Seventh Circuit which found that no right exists under Illinois law to salary increases over and above those provided for by the City of Chicago 1972 appropriation ordinance. They contend that all civil service employees of the City of Chicago who were employed prior to 1972 are entitled to step and longevity increases in 1972 although no appropriation was made for such salary increases, and that to deny such increases in salary violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

In *Board of Regents* v. *Roth,* 408 U.S. 564, 33 L.Ed.2d 548, 92 S.Ct. 2701 (1972) this Court defined those attributes of public employment which are protected property rights. The Court stated:

> "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expecta-

> tion of it. He must, instead, have a legitimate claim of entitlement to it." 408 U.S. at 577.

Based on this concept of protected rights the court of appeals determined that petitioners' constitutional claims, as well as their claims under the provisions of the Economic Stabilization Act of 1971, Title 12 United States Code, section 1904 *et seq.*, depended on whether a contractual relationship existed between the petitioners and the City under state law. The court of appeals correctly applied state law and determined that petitioners had no protected right to salary increases.

It is a well-established principle of Illinois law that municipal employees have no contractual rights as to salary. In *Gathemann* v. *City of Chicago,* 263 Ill. 292, 296 (1914) the court stated:

> "It is a general rule, when not qualified or restricted by positive law, that the power that created any office may abolish it in its discretion, and this rule applies to municipal officers. The salaries of such officers may be reduced or otherwise regulated as the municipality may decide. Even though an officer be appointed for a fixed period, yet where he cannot be compelled to serve the whole time such appointment cannot be considered a contract for hire for a stipulated time. Ordinances fixing salaries are not contracts with officers for their full term of office."

As a corollary to this principle the Illinois courts have held that municipal employees are solely entitled to that compensation provided for by law in an appropriation ordinance. *May* v. *City of Chicago,* 229 Ill. 595 (1906); *Koons* v. *Richardson,* 227 Ill. App. 477 (1923); *Stahl* v. *Board of Education of the City of Chicago,* 334 Ill. App. 366 (1948).

Petitioners do not allege that the appropriation ordinance for 1972 provided for the longevity and step increases they seek; the 1972 appropriation contained no such provision. Nevertheless, they claim they are entitled to those salary increases as a matter of constitutional law. This is not the first attempt to seek such an increase. A suit based on the same factual matters as this petition was rejected by the Illinois Supreme Court in *Chicago Patrolmen's Association* v. *City of Chicago,* 56 Ill.2d 497 (1974) which stated that neither the Economic Stabilization Act of 1970 nor the executive orders issued pursuant to the act gave Chicago police officers any additional rights to salary increases beyond those stated in the 1972 appropriation.

The Chief Justice, in his concurring opinion in *Perry* v. *Sinderman,* 408 U.S. 593 (1972), noted that in cases involving state employees, the point should be underscored that the relationship between a state employee and his state employer is a matter of state concern and state law. The Court of Appeals for the Seventh Circuit's opinion fully followed state law as interpreted by the Illinois Supreme Court. Thus this case involves no important question of either state or federal law and no reason exists for granting petitioners' request for a writ of certiorari.

II.

RESPONDENTS' ACTIONS DID NOT VIOLATE THE EQUAL PROTECTION CLAUSE

Petitioners contend that the action of the respondents in eliminating all seniority and longevity increases from the 1972 appropriation ordinance and increasing petitioners' salaries by 5.5% of the amount actually received in 1971 creates unequal treatment among a common group of public

employees in violation of the Equal Protection Clause of the Fourteenth Amendment. They argue that the failure to provide incumbent employees with seniority and longevity salary increases placed them in the same economic position as newly hired employees. Thus, they state, an unconstitutional classification was created. Even assuming that groups of employees were subject to different treatment, the court of appeals, following the standard of *Dandridge* v. *Williams*, 393 U.S. 471 (1970), correctly found that the action of respondents was reasonable and therefore constitutional.

In *Dandridge* v. *Williams, supra,* this Court ruled that an economic classification based on statute will be upheld if any set of facts exists to support the state action and no suspect classification is created. Ample facts exist to support respondents' actions here.

The 1972 appropriation ordinance was passed pursuant to statute on December 10, 1971, at a time when Phase II of the Economic Stabilization Act merely permitted a 5.5% increase in salaries and had as yet not permitted the retroactive payment of increases pursuant to a pay practice established prior to the inception of Phase I wage controls. Had respondents based the 5 to 5.5% increase on the salary that petitioners were scheduled to receive in 1971, as petitioners wish, they would have violated Phase I of the Economic Stabilization Act in that they would have granted an increase in salaries in excess of 5.5% of what petitioners had actually received in 1971. The act of the respondents in enacting a budget pursuant to federal law can hardly be characterized as arbitrary. The City legislated in a reasonable manner given the economic climate of the moment and particularly in the light of the national anti-inflation policy which was firmly established by the Economic Stabilization

Act. In areas of salary classification, the determination of the Chicago City Council should be given great weight when the determination is attacked on equal protection grounds.

The court of appeals correctly determined that petitioners were not treated in an unreasonable manner. Petitioners suggest no reason why this finding was incorrect. Thus no reason exists for a grant of certiorari in this matter.

CONCLUSION

For these reasons, it is respectfully submitted that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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April 18, 1977